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5 Attorneys for Secured Lienholder,
6 EIM-EI Segundo,
A California limited partnership

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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

10
11 **In re**

12 **Azid Amiri,**

13
14 **Debtor.**

Case No. 10-41570

Chapter 13

**MOTION FOR FOR DETERMINATION
THAT THE AUTOMATIC STAY IS
INAPPLICABLE, OR ALTERNATIVELY
FOR RELIEF FROM THE AUTOMATIC
STAY, AND FOR SANCTIONS**

DATE: June 16, 2010

TIME: 10:30 a.m.

CTRM: 220

RS No: EKY-1

The Honorable Randall J. Newsome

21 Pursuant to Bankruptcy Code Sections 362(a) and 362(d), EIM-EI Segundo, a
22 California partnership and secured lienholder ("EIM"), hereby moves: (1) for a
23 determination that the automatic stay of Bankruptcy Code Section 362(a) is inapplicable
24 with regard to EIM's enforcement of, and protection of its interests in: (a) that certain
25 Installment Note ("Note") dated July 14, 2004, in the initial principal amount of \$345,000,
26 made and executed by Kang Property, Inc. ("Note"); and (b) that Short Form Deed of
27 Trust ("Deed of Trust") executed by Kang Property, Inc., dated July 14, 2004, and
28 recorded as Document No. 2004-027758 on July 20, 2004, against that certain real

1 Property and gas station improvements thereon located at 7920 Brentwood Blvd,
2 Brentwood, CA ("Property"), including, without limitation, that the automatic stay is
3 inapplicable to prevent EIM from proceeding with, and completing, its foreclosure sale of
4 the Property.

5 Alternatively, EIM moves this Court for relief from the automatic stay of
6 Bankruptcy Code Section 362(a) with regard to EIM's enforcement of, and protection of
7 its interests in, (a) the Note; and (b) the Deed of Trust, including, granting EIM relief
8 from the automatic stay to immediately allow EIM to proceed with, and completing, its
9 foreclosure sale of the Property. By this Motion, the Lender also seeks, an order that
10 instructs the Lender to promptly continue its non-judicial foreclosure without being
11 required to wait the 14 day period in Bankruptcy Rule 4001(a)(3) for the Order to
12 become final since each day that goes by brings the accrual of interest and penalties on
13 senior debt and the real property taxes on the Property to EIM's detriment.

14 The basis for this motion for determination that the automatic stay does not apply
15 to prevent EIM from enforcing its rights under the Note and Deed of Trust, including
16 foreclosure on the Property, is because the Chapter 13 Debtor, Azid Amiri ("Debtor"),
17 does not own the Property that he asserts he owns, which is instead owned by a non-
18 debtor corporation, Kang Property, Inc. and an individual Abolghassam H. Shahidi
19 ("Shahidi"). The Debtor is not the borrower of EIM. The obligation being enforced is not
20 an obligation of the Debtor and the Property is not property of the Debtor or the Debtor's
21 bankruptcy estate.

22 The basis of this motion for relief from the automatic stay includes: (i) "for cause",
23 including, without limitation, the bad faith filing of this Chapter 13 Case by Azid Amiri
24 ("Debtor"), the inaccurate and misleading Schedules and Statement of Affairs filed by
25 Azid Amiri ("Debtor") in this case, the ineligibility of the Debtor to be a Chapter 13 debtor,
26 the inability of the Debtor to confirm a Chapter 13 plan which restructures the debts of
27 the non-debtor corporation Kang, Inc., and the lack of adequate protection of Lender's
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1 interest in the Property due to accruing senior liens. EIM requests and moves that the
2 Court sequester EIM's cash collateral, the issues and profits from the Property to protect
3 EIM's interests.

4 This Motion is based upon this Motion, the Notice and Opportunity For Hearing
5 On Motion For Determination That The Automatic Stay Is Inapplicable, And For
6 Sanctions, the Notice Of Hearing On Alternative Motion For Relief From The Automatic
7 Stay, And For Sanctions, the Memorandum Of Points And Authorities In Support Of
8 Motion For Determination That The Automatic Stay Is Inapplicable, Or Alternatively For
9 Relief From The Automatic Stay, And For Sanctions, the Declaration Of Emma Gardner
10 In Support Of Motion For Determination That The Automatic Stay Is Inapplicable, Or
11 Alternatively For Relief From The Automatic Stay, And For Sanctions, the oral
12 arguments of counsel, and such other and further evidence and arguments as may be
13 presented at any hearing on these motions.

14 PLEASE TAKE NOTICE THAT SHOULD THE DEBTORS FAIL TO APPEAR AT
15 THE HEARING ON THE ABOVE MOTION FOR RELIEF FROM THE AUTOMATIC
16 STAY AND CONTEST OR OBJECT TO THE MOTION, THE COURT MAY GRANT
17 LENDER IMMEDIATE RELIEF FROM STAY AT THE HEARING AND LENDER WOULD
18 THEN HAVE THE RIGHT TO PROCEED WITH ITS NON-JUDICIAL FORECLOSURE
19 SALE OF THE PROPERTY UNDER THE POWER OF SALE PROVISION IN THE
20 DEED OF TRUST.

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22 DATED: May 21, 2010.

LAW OFFICES OF EUGENE K. YAMAMOTO

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24 By /S/ Eugene K. Yamamoto

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26 NOTICE IS HEREBY GIVEN THAT a hearing will be held on June 2, 2010 at
27 10:30 a.m. ("Hearing") in Courtroom 220 of the United States Bankruptcy Court For The
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1 Northern District of California located at 1300 Clay Street, Suite 300, Oakland, California,
2 94612, before the Honorable Randall J. Newsome, United States Bankruptcy Judge.
3 The Hearing will concern the Motion For For Determination That The Automatic Stay Is
4 Inapplicable Or Alternatively For Relief From The Automatic Stay ("Motion") by secured
5 lienholder, EIM-EI Segundo, a California partnership ("EIM").

6 This is a core proceeding under the United States Bankruptcy Court and this
7 Creditor consents to a final Order by the above-entitled Court which has jurisdiction over
8 this motion pursuant to 28 U.S.C. §157(a), et seq. and 28 U.S.C. §1334, et seq.

9 PLEASE TAKE NOTICE THAT SHOULD THE DEBTOR FAIL TO APPEAR AT
10 THE HEARING AND CONTEST OR OBJECT TO THE MOTION, THE COURT MAY
11 GRANT EIM IMMEDIATE RELIEF FROM STAY AT THE HEARING AND LENDER
12 WOULD THEN HAVE THE RIGHT TO PROCEED WITH ITS NON-JUDICIAL
13 FORECLOSURE SALE OF THAT CERTAIN REAL PROPERTY AND IMPROVEMENTS
14 THEREON LOCATED AT 7920 BRENTWOOD BLVD, BRENTWOOD, CA UNDER THE
15 POWER OF SALE PROVISION IN THE DEED OF TRUST EXECUTED BY THE KANG
16 PROPERTY, INC..

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18 DATED: May 21, 2010.

LAW OFFICES OF EUGENE K. YAMAMOTO

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20 By: /s/ Eugene K. Yamamoto
21 Eugene K. Yamamoto,
22 Attorney for Secured Lienholder, EIM-EI
23 Segundo, Inc.
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